HARVARD LAW REVIEW.

Published Monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

THE following imaginary Crown Case reserved was lately argued at the University of Cambridge in a moot court before Professor Maitland: —

"John Styles was indicted before me at the late Assizes for larceny of a portmanteau, the goods of William Vokes. The facts proved were these: William Vokes was keeper of the White Hart Hotel at Blankborough. On the 5th of June Styles arrived at the hotel, bringing with him the portmanteau. He engaged a bedroom, ordered dinner, which was supplied, and occupied the bedroom during the night. On the next morning he told the landlord that his portmanteau wanted a new lock, and he asked at what shop he could obtain one. The landlord told him of a shop. The prisoner called a cab, fetched his portmanteau from the bedroom, and placed it in the cab, and then (the landlord being out of hearing) told the cabman to drive to the railway station, where the prisoner took the train which was on the point of leaving for London, taking his portmanteau with him. He had not paid his bill at the inn. Upon these facts I directed the jury that, if they were of opinion that the prisoner took the portmanteau from the inn with intent to avoid payment of his bill and to deprive the landlord of any right that he had to detain the portmanteau, they should find the prisoner guilty of larceny. They found him guilty. If the court should be of the opinion that this direction was right, the conviction is to be affirmed; otherwise, it is to be quashed."[1]

AN article in the last "Green Bag," entitled "Putting New Wine into Old Bottles," by Seymour D. Thompson, Judge of the St. Louis Court of Appeals, calls for a remark or two. It would be hard to dissent from the affirmative part of Judge Thompson's advice, that judges and lawyers should think for themselves, — his own article, indeed, indicates more clearly, probably, than was intended the importance of serious and instructed thinking, — but the remarks on the "old musty books" of law in which we are urged to "stop rummaging" are not very intelligent.

Exactly what is the position which Judge Thompson would take? Does he mean that there is a disposition in this country at the present time to pay an undue regard to ancient authority, and in

[1] 5 L. Q. Rev., pp. 227, 228.

doing so to set aside reason and common sense? If so, — and his objection seems to be rather to the antiquity of the cases than to the frequent ignorant and ineffective handling of them, of which a point might well be made, — he would do well to give us some instances of this tendency. Does he believe that a judge of to-day can safely strike out for himself, relying on his own powers and disregarding the fact that the law with which he deals is the product of centuries of slow growth and development? Then the greatest of our lawyers and judges have been on the wrong track. One has only to read, for example, the opinions of Lord (then Mr. Justice) Blackburn in such cases as *Redhead* v. *Midland Railway Co.* or *Rylands* v. *Fletcher* to see how the greatest living authority in the common law has brought its past to bear on the question before him. And in the light of modern historical study it would be easy to multiply cases in our own century where the most learned judges have been in the dark from the failure to apprehend the process of growth by which the law had reached the point at which they found it, and have added to the confusion by their discussions.

If, as Judge Thompson tells us, our ancestors of the Elizabethan period were, compared with us, "barbarians compared with the civilized man," it would certainly be unadvisable to spend too much time over their productions. But Judge Thompson's argument would be stronger if he would designate a few of the "moderns" compared with whom Lord Coke and Sir Francis Bacon were "children" "in intellectual stature."

We have received from Mr. Samuel B. Clarke, of New York, a copy of his essay entitled "Current Objections to the Exaction of Economic Rent by Taxation Considered,"[1] read at the September, 1888, meeting of the American Social Science Association.

It is the purpose of the paper "to set out the essential reasons for approving George's plan, and to point out with reference to the current criticisms upon his doctrine wherein they fail to meet those reasons." Although Mr. Clarke advances no new arguments for the "single tax system," yet the clearness and conciseness with which, from a judicial standpoint, he presents the fundamental propositions on which George's argument rests, together with the most weighty objections to prevailing systems of land tenure, certainly entitle him to the gratitude as well of the opponents as the friends of George's proposed innovation.

Mr. Clarke says, "The fact that land has a value which is unearned by the occupant is no ground at all for exacting such value, if the land is really his. But if it is not his, the fact that its value measures natural differences and the general need of the people for land enables us to do with great simplicity and reasonable approximation to accuracy what otherwise there would be no practicable way of doing at all." This is the theory and practice of George's plan in a nutshell.

Whether land *is* the property of the present so-called owners, that is to say, whether the legal duties and liabilities usually connoted by the term "ownership in fee" are in accord with the dictates of what Mr. Clarke would call "natural justice," or "natural rights," we leave to the readers of his admirable monograph to determine.

[1] This essay is an amplification of an article by the same author in 1 Harv. L. Rev. 265. See also ib. 344.

THE Legislatures of our States are asked almost every year to make some changes in the law of libel in the interests of the newspapers. A typical example of such legislation is a bill now before the New York Legislature, of which the following section contains the most radical change contemplated in the common law of libel: "§ 1908. In any action hereafter to be maintained for the publication of a libel in any newspaper, magazine, or other periodical in this State, unless the plaintiff shall prove upon the trial either malice in fact, or that the defendant, after having been requested by him in writing to retract the libellous charge or statement in as public a manner as that in which it was made, has failed to do so within a reasonable time, he shall recover nothing but such actual damages as he may have specially alleged and proved." In the Massachusetts Legislature there is now under consideration in committee a bill very much to the same effect.

Similar laws relating to newspaper libel have been passed in Minnesota and Michigan; but in the latter State the law has been declared unconstitutional by a unanimous decision of the Supreme Court,[1] on the ground that it is class legislation. In Minnesota the law has been declared constitutional by a divided court.[2]

Whatever may be said in regard to the constitutionality of such laws, it is plain that they do not promote the ends of justice. The common law affords ample protection to the defendant. The rule that the truth is a defence gives greater immunity to the press than appears at first blush. For one who has been libelled, though he may know that the defendant cannot prove the truth of the charge, will hesitate a long time before bringing action, because of the ruthlessness with which his past record will be handled on the trial by evidence which can be admitted under this plea. Then, again, privileged communications cover such a wide ground that a respectable newspaper can keep clear of libel suits while maintaining a proper fearlessness and independence in a discussion of public affairs.

A little consideration will show the doubtful justice of laws similar to the one now before the New York Legislature. Such a provision would, of course, affect only such communications as are not privileged. The publication of libellous matter is due to a desire usually to print something which will cause the paper to sell, not to any malice against the individual; consequently the plaintiff, being unable to prove malice, can only recover for *actual* damage. Again the plaintiff fails because defamation affects primarily a man's reputation, and seldom causes such pecuniary loss as can be proved. The plaintiff is thus left practically without remedy. A man's right to reputation is as sacred as his right to life and liberty, and should be guarded as carefully.

PROF. MELVILLE M. BIGELOW'S excellent little book on the law of Torts, so well known to students in this country, has lately appeared in an English edition from the University Press at Cambridge. This edition was prepared at the special request of gentlemen connected with the University of Cambridge for use in the law instruction at that university, where Mr. Bigelow's earlier volume was already used as a text-book. The new edition has been largely rewritten. Certain changes were of course necessary in presenting, as the author has

[1] 39 Alb. L. J., 314. [2] Ibid. 294.

undertaken to do here, the law of England rather than the law of America; but beside these changes a valuable Introduction has been added to the book, a separate chapter on "Malicious Interference with Contract" appears for the first time, and many chapters, especially that on Negligence, have been enlarged and materially altered. It is noticeable among other things, that Mr. Bigelow has considerably modified his views on Imputed Negligence, in line with recent decisions.[1]

IT is noticeable that in the recent New York case of *Presbyterian Church* v. *Cooper*, digested in this number of the REVIEW, neither court nor counsel referred to the well-known case of *Lawrence* v. *Fox*,[2] decided by the New York Court of Appeals in 1859. There it was held that where a contract was for the benefit of a third party, the beneficiary could sue the promisor, and that "the law operating on the act of the parties, created the duty, established the privity, and implied the obligation on which the action is founded."

In *Church* v. *Cooper*, defendant signed a subscription paper for the benefit of the church, containing a condition that his promise should be void if the whole sum needed were not subscribed within a year, and reciting the consideration as follows: "In consideration of $1.00 to each of us (subscribers) in hand paid, *and the agreement of each other in this contract contained*, we agree," etc. The church was the nominal promisee, but defendant proved that the $1.00 had not in fact been paid. The court held that, admitting a bilateral contract to exist between the several *subscribers*, yet plaintiff, being a stranger both to consideration and promise, could not recover.

It would seem that here, if anywhere, the anomalous doctrine of *Lawrence* v. *Fox*, and of the cases in other States which follow it, e. g., *Holsteller* v. *Hollinger*, 12 Atl. Rep. 741 (Pa.), *Nat. Bank* v. *Grand Lodge*, 98 U. S. 123, etc., would, if applied, have worked substantial justice, and carried out the original intention of the parties. Clearly, in an action between any *subscribers*, only nominal damages could have been recovered; but in view of the facilities for equitable relief in such cases this argument has little force, and, indeed, seems likely to be abandoned by the court that first used it to establish the legal right of a beneficiary to maintain an action on the contract.

"THE GREEN BAG," edited by Mr. Horace W. Fuller, though styled "A Useless but Entertaining Magazine for Lawyers," is, in reality, both entertaining and useful. The opening number is especially attractive to those interested in the Harvard Law School. Louis D. Brandeis, Secretary of the Law School Association, contributes an excellent article on "The Harvard Law School," which is illustrated with portraits of Story, Greenleaf, Parker, Parsons, Washburn, and Langdell, and views of Dane and Austin Halls, and gives a full and clear account of the origin, growth, work, and purposes of the Law School. The number also contains a valuable article by Professor Ames on "Specific Performance of Contracts," which gives an historical review on the earliest cases on the subject.

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[1] See the recent case of *Mathews* v. *London Street Tramways Co.*, 60 L. T. Rep. N. S. 47, approving *The Bernina*, 13 Appeal Cases, 1. It is to be noticed, however, that the case of *Waite* v. *N.E. Ry. Co.*, E., B. & E. 719 has never been expressly overruled, nor has a precisely similar case since arisen. See also *Markham* v. *H. D. N. Co.*, 11 S. W. Rep. 131 (Texas) *infra*, p. 93.

[2] See article on Priority of Contract, 1 Harv. L. Rev. 226, for a discussion of *Lawrence* v. *Fox* and kindred cases.